

KEANE & MARLOWE, LLP
Attorneys for Defendants
REPINTER INTERNATIONAL SHIPPING
CO. S.A. and MIACHART CORPORATION LLC
197 Route 18 South Suite 3000
East Brunswick, New Jersey 08816
(732) 951-8300
Mary Ann C. Marlowe (MM-0723)
Christopher P. Keane (CPK-4394)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
DEVAL DENIZCILIK VE TICARET A.S.,

**REPLY DECLARATION OF
DAVID MARTIN SEMARK**

Plaintiff,

-against-

07 Civil 3397 (JGK)

REPINTER INTERNATIONAL SHIPPING
CO. S.A. and MIACHART CORPORATION
LLC.,

Defendants.

Exhibit 1 to the Declaration of David Martin Semark
Dated 19th July 2007

On application made to the Chancery Division of the High Court² a guarantee may be cancelled and set aside on equitable grounds. Thus a fidelity guarantee may be ordered to be cancelled where the employee has been guilty of misconduct and the employer has refused to dismiss him or to give up the guarantee³. Any division of the High Court may give effect to an equitable defence alleging grounds for the cancellation of a guarantee⁴.

- 1 See the Supreme Court Act 1981 s 49; and EQUITY vol 16(2) (Reissue) para 499. Formerly an injunction for the purpose was obtainable: *Hawkshaw v Parkins* (1819) 2 Swan 539 at 544; *Samuell v Howarth* (1817) 3 Mer 272; *Moore v Bowmaker* (1815) 6 Taunt 379; *Small v Currie* (1854) 5 De GM & G 141; *Allan v Inman* (1843) 7 Jur 433.
- 2 See the Supreme Court Act 1981 ss 49, 61, Sch 1 para 1(g); and COURTS vol 10 (Reissue) para 611; EQUITY vol 16 (Reissue) para 499. As to the equity jurisdiction of county courts see COURTS vol 10 (Reissue) para 719.
- 3 *Burgess v Eve* (1872) LR 13 Eq 450 at 458–459; *Phillips v Foxall* (1872) LR 7 QB 666 at 681–682. As to the cancelling of documents generally see EQUITY vol 16(2) (Reissue) paras 485–486.
- 4 See the Supreme Court Act 1981 s 49.

(ii) Guarantor's Rights on Payment being Demanded

223. Guarantor's right to set-off and counterclaim. On being sued by the creditor for payment of the debt guaranteed, a guarantor may rely upon any right of set-off or counterclaim which the principal debtor could set up against the creditor in reduction of the guaranteed debt in reduction of the claim against him under the guarantee¹. Whenever the set-off or counterclaim relied on does not operate directly to reduce the debt guaranteed, the principal debtor should be made a party, so as to bind him and prevent him afterwards claiming payment from the creditor².

However, the guarantor will not be entitled to rely upon the principal debtor's rights of set-off or counterclaim if the guarantee, on its true construction, requires the guarantor to pay a particular amount due irrespective of the accounting position between the principal debtor and the creditor³. Nor, where the guarantee takes the form of a legal mortgage, can the mortgagor guarantor usually resist the creditor mortgagee's claim for possession by relying upon the fact that the principal debtor has a claim for unliquidated damages by way of set-off against the creditor for an amount which exceeds the amount secured⁴.

- 1 *Bechervaise v Lewis* (1872) LR 7 CP 372; *Murphy v Glass* (1869) LR 2 PC 408; *Alcoy and Gandia Rly and Harbour Co v Greenhill* (1897) 76 LT 542 at 552–553; on appeal (1898) 79 LT 257, CA; see also *Thornton v Maynard* (1875) LR 10 CP 695; *Hyundai Shipbuilding and Heavy Industries Co Ltd v Pournaras* [1978] 2 Lloyd's Rep 502 at 508, CA, per Roskill LJ, where the passage in the text as it appeared in an earlier edition of this title was cited with approval. The guarantor will be entitled to rely (provided all parties are solvent) upon any provision in the principal contract widening the principal debtor's right of set-off: *Aurora Borealis Compania Armadora SA and Buenamar Compania Naviera SA v Marine Midland Bank NA, The Maistros* [1984] 1 Lloyd's Rep 646. See also *Bowyear v Pauson* (1881) 6 QBD 540; *Newton v Lee* 139 NY 332 (1893); *Gillespie v Torrance* 25 NY 306 (1862); *Cheetham v Crook* (1825) M'Cle & Yo 307. Contrast *R v Shaw* (1901) 27 VLR 70 (Vict SC) (where the decision to deny set-off may be explained on the grounds of public policy), and *Cellulose Products Pty v Truda* (1970) 92 WNNSW 561. As to set-off see generally SET-OFF AND COUNTERCLAIM.
- 2 *Murphy v Glass* (1869) LR 2 PC 408. Where the principal debtor's cross-claim would not provide him with a defence to the creditor's claim (as, for example, where the creditor's claim against the principal is under a bill of exchange or for charter hire or freight), it will similarly not provide the guarantor with a defence to the creditor's claim under the guarantee: *Aliakmon Maritime Corp v Trans Ocean Continental Shipping Ltd, The Aliakmon Progress* [1978] 2 Lloyd's Rep 499, CA.
- 3 *Hyundai Shipbuilding and Heavy Industries Co Ltd v Pournaras* [1978] 2 Lloyd's Rep 502, CA; applied in *Hyundai Heavy Industries Co v Papadopoulos* [1979] 1 Lloyd's Rep 130, CA; and approved [1980] 2 All ER 29, [1980] 1 WLR 1129, [1980] 2 Lloyd's Rep 1, HL. In that case the underlying contract provided that payments were not to be withheld in consequence of any dispute, and the guarantee stated that 'in case the [principal debtor] is in default of any such payment [the guarantor] will forthwith make the payment

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Christopher P. Keane (CPK-4394)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
DEVAL DENIZCILIK VE TICARET A.S.,

Plaintiff,

-against-

REPINTER INTERNATIONAL SHIPPING
CO. S.A. and MIACHART CORPORATION
LLC.,

Defendants.

**REPLY DECLARATION OF
DAVID MARTIN SEMARK**

07 Civil 3397 (JGK)

Exhibit 2 to the Declaration of David Martin Semark
Dated 19th July 2007

From: RAOSHIPMAN@aol.com
Sent: Thursday, January 11, 2007 10:22 AM
To: charter@miachart.com
Subject: Orhan Deval/BSC

1-11-07
gd

Jr / Ralph

Orhan Deval/Belarus

Reference various telcon/email exchanges over the past couple of weeks pleased to recap the following further agreement asf.

- Hire USD \$18,750.00 dly in direct continuation after completion of 2nd leg under under presnt chrtr.
- period upto April 30, 07 +/- 10 days
- redelivery ranges asf:
 - Boston/Buenos Aires rge
 - Casablanca/Durban rge
 - Skaw/Black Sea rge

otherwise as per c/p dtd 11-16-06 as applicable or unless already agreed.

Trustg the abve in good order.

p.s. am back in he office tdy

brgds/Ralph

From: RAOSHIPMAN@aol.com
Sent: Wednesday, November 15, 2006 12:12 PM
To: charter@miachart.com
Subject: ORHAN DEVAL/BSC MINSK

Follow Up Flag: Follow up
Flag Status: Flagged
 11-15-06
 gd

JR / RALPH

CONFIRM HAVING FIXED CLEAN AS FOLLOWS

TRADE A/O FIXTURE ABSOL PRIV AND CONFIDENTIAL

A/C BELARUSSIAN SHIPPING CO., MINSK

DISPONENT OWNER: REPINTER SHIPPING INTL

ORHAN DEVAL
 BUILT 1984 (NOV) 27,562 SUMMER DWT ON 9.765 M DRAFT
 TURKISH FLAG - ABS CLASS - LOA/BEAM/DEPTH M 168.30/26.00/13.63 M
 SELFTRIMMER BC - 5 HOLDS/5 HATCHES - FOLDING TYPE STEEL
 HATCH COVERS - GRD 4 X 25T CRANES - 2 X 10 CBM MECHANIC GRABS -
 LOGS FITTED - P&I UK (BERMUDA)
 HOLD NO. LENGTH GRAIN/BALE - HATCH SIZES
 - 1 18.00 M - 151,060/140,578 - 9.48 X 13.32 M
 - 2 26.00 M - 271,138/262,090 - 18.96 X 13.32 M
 - 3 26.00 M - 272,416/262,744 - 18.96 X 13.32 M
 - 4 26.00 M - 272,953/263,584 - 18.96 X 13.32 M
 - 5 26.00 M - 256,645/251,150 - 18.96 x 13.32 M

 TOTAL GR/BL 1,224,212/1,180,146 CBFT

SPEED/CONSUMPTION:
 ABT 12.5 KT ON ABT 21 MT IFO 180 CST + ABT 0.2 MT G/O AT SEA.
 IN PORT WRKG SHE BURNS ABT 2.5 MT IFO AND ABT 0.2 MT MGO
 AND WHEN IDLE IN PORT SHE BURNS ABT 1.2 MT IFO AND ABT 0.2 MT MGO.

ECO SPEED/CONSUMPTION ABT 11 KTS ON 18 MTS IFO

ALL DETLS 'ABT'

- DELY DLOSP BOURGAS ATDNSHINC
- LAYCAN NOV 16-21, 06 (PRESNT ETR 11/19)
- BALTIME CANCELLG CLAUSE - SHOULD IT BECOME OBVIOUS THAT THE VESSEL IS GOING TO MISS HER CANCELLING, OWNERS TO PROPOSE A NEW LAYCAN AND THE CHARTERERS ARE TO DECIDE WITHIN 24 WORKING HOURS AS TO WHETHER THE NEW LAYCAN IS ACCEPTABLE, FAILING WHICH OWNERS' PROPOSAL WILL BECOME THE NEW LAYDAYS.
- ONE TCT VIA S(A)S,S(B)S, S(P)S ALW AFL AND ALW W/I IWL CHOPT 2ND LADEN LEG
- REDELY DLOSP SP JAPAN/SINGAPORE RGE INCLUDING FULL MALAYSIA/INDONESIA ATDNSHINC
- HIRE USD 18,000 DLY INCLOT
- DUR ABT 45/50 D WOG - IF 2ND LEG OPTION EXERCISED DUR WILL BE ABT 20/25 DAYS LONGER
- IF THE CHRTRS AFTER THE 1ST LADEN LEG END UP IN INDIA, CHARTERERS TO ADVISE OWNERS IN A TIMELY FASHION AND OWNERS HAVE THE OPTION TO ALLOW THE CHRTRS TO REDELIVER THE VESSEL IN INDIA IF SO DESIRED.
- INT HARMLESS BULK FERTILIZERS

- BUNKER CLAUSE

BUNKERS ON DELIVERY ABT 135/165 MTNS IFO AND 35/50 MT MGO WHICH TO BE PAID ALONG WITH FIRST HIRE PAYMENT AT USD 290.00 PMT IFO/590.00 PMT MGO. VESSEL TO BE REDELIVERED WITH MINIMUM SAME QUANTITY AS ON DELIVERY. CHARTERERS ARE TO ADVISE OWNERS OF THEIR BUNKERING INTENTIONS AND OWNERS TO HAVE THE OPTION TO BUNKER VESSEL FOR THEIR OWN ACCOUNT CONCURRENTLY WITH CHARTERERS WITHOUT INTERFERENCE WITH CHARTERERS OPERATIONS.

- ILOHC USD \$3,500.00

- CVE USD \$1,300.00

5 TTL HERE FOR DIVISION

OTHERWISE AS PER OWNERS B-T-B HEAD CP DTD APRIL 13, 2006 OTHER THAN LOGICAL ALTERATIONS OR UNLESS ALREADY AGREED IN MAIN TERMS AND WITH THE FOLLOWING AMENDMENTS

70

CL 43 SECOND PARAGRAPH, DELETE 2ND SENTENCE

CL 48 - delete 2d paragr. and insert fol wording:

- CHARTERERS HAVE THE OPTION TO SWITCH/SPLIT BS/L. IF THE 2ND SET OR SPLIT BS/L ARE REQUIRED BY CHTRS, CHTRS OR THEIR AGENTS AT LOADPORT ARE AUTHORISED TO SIGN SAME ON OWNERS'/MASTER'S BEHALF AND ISSUE SAME TO CHTRS AGAINST SURRENDER OF THE ENTIRE FIRST SET OF ORIGINAL BS/L TO OWNERS representative at load port ALONG WITH CHARTERERS LOI IN OWNERS P&I CLUB WORDING FOR SWITCHING OR SPLITTING THE BS/L. ANY COSTS ASSOCIATED WITH SWITCHING OR SPLITTING OF THE BS/L TO BE FOR CHTRS ACCT. A DRAFT OF THE 2ND SET OF BS/L AND THE COPY OF THE CHTRS LOI TO BE FAXED TO OWNERS FOR PRIOR APPROVAL. UPON SURRENDERING DULY CANCELLED 1ST SET OF ORIGINAL BS/L AND CHTRS LOI TO OWNERS representative at load port, THE 2ND SET ORIGINAL B/LS TO BE IMMEDIATELY RELEASED TO CHTRS. CHTRS ARE ONLY AUTHORISED TO CHANGE THE DETAILS OF SHIPPERS AND/OR NOTIFY PARTY AND/OR RECEIVERS AND/OR CONSIGNEES AND SPLIT THE QUANTITY LOADED (WITH TTL QTTY REMAINING UNCHANGED) IN THE 2ND SET BS/L. OWNERS OPTION TO HAVE THEIR UKRAINE REPS WHETHER LOCATED IN LOADPORT OR NOT TO HANDLE SUCH SWITCH.

CL 69 - USD 500 per hold

END RECAP

TRUSTG YOU SHALL FIND THE ABVE IN GOOD ORDER - MNY THANKS
FIXTURE AND LET'S HOPE FOR A SMOOTH VOYAGE FOR ALL PARTIES
CONCERNED.

In the meantime have officially requested an extension until Nov 21st, 06'

BST RGDS/RALPH

KEANE & MARLOWE, LLP
Attorneys for Defendants
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Mary Ann C. Marlowe (MM-0723)
Christopher P. Keane (CPK-4394)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
DEVAL DENIZCILIK VE TICARET A.S.,

Plaintiff,

-against-

REPINTER INTERNATIONAL SHIPPING
CO. S.A. and MIACHART CORPORATION
LLC.,

Defendants.

**REPLY DECLARATION OF
DAVID MARTIN SEMARK**

07 Civil 3397 (JGK)

Exhibit 3 to the Declaration of David Martin Semark
Dated 19th July 2007

E.G. ARGHYRAKIS & CO. Fax: 00442073532295

10 Jul 2007 18:52

P.01/01

**E.G. Arghyrakis & Co.**

150 Fleet Street
London EC4A 2DQ
Tel: +44 (207) 353 2302
Fax: +44 (207) 353 2295
www.egalegal.com

E.G. Arghyrakis
S.L. Glover

FAX TRANSMISSION

To:	Reed Smith Richards Butler	Fax:	+44 (207) 247 5091	Date:	10.07.07
Attn:	David Semark	Loc:	London	Pages:	1
Ref:	DMS/729267/00002			Our ref:	EGA/07-195

ORHAN DEVAL / Repinter c/p 13.04.06

Please note that we have today appointed Christopher Moss as Owners' arbitrator in relation to all disputes under the captioned charterparty and the Miachart guarantee.

Please let us have the appointment of an arbitrator on behalf of the Charterers and the guarantors as soon as possible and in any event within 14 days, failing which we will take steps to appoint Mr. Moss as sole arbitrator in this reference.

Mr Moss' details are as follows:

4 Charlotte Place
Wilton Road
London SW1 1LL
Tel: +44 (207) 233 7032
Fax: +44 (207) 233 7035
e-mail: arbitration@christophermoss.com

Kind regards,

George Arghyrakis
E.G. Arghyrakis & Co.

Regulated by the Law Society

This message is confidential and may be privileged. If you are not named as a recipient please inform us immediately and do not disclose its contents to anyone else.

KEANE & MARLOWE, LLP
Attorneys for Defendants
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-against-

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CO. S.A. and MIACHART CORPORATION
LLC.,

Defendants.

Exhibit 4 to the Declaration of David Martin Semark
Dated 19th July 2007

From: Semark, David M. <DSemark@ReedSmith.com>
To: Mark Seward <MSeward@m-f-b.co.uk>
Sent: Tue Jul 10 19:18:03 2007
Subject: Orhan Deval C/P dd 16.11.06

Dear Mark

I attach a fax from E.G. Argyrakis & Co from which you will note that they have now appointed Mr Christopher Moss as Head Owners' nominated arbitrator in the head reference.

Please take this email as Disponent Owners' notice of Mr Moss's appointment as Disponent Owners' arbitrator in respect of all disputes under the C/P dd 16th November 2006.

Mr Moss's contact details are as follows:

4 Charlotte Place,
Wilton Road,
London,
SW1V 1DP
United Kingdom.
Tel: 020 7233 7032
Fax: 020 7233 7035
Email: arbitration@christophermoss.com

I have just spoken to Mr Moss and he has accepted the appointment for Disponent Owners in the sub-reference.

We look forward to receiving details of Charterers' nominated arbitrator in due course, but in any event, within 14 days of today.

Kind regards

David

David Semark
Partner
Shipping Group
Reed Smith Richards Butler LLP

KEANE & MARLOWE, LLP
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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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-against-

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CO. S.A. and MIACHART CORPORATION
LLC.,

Defendants.

**REPLY DECLARATION OF
DAVID MARTIN SEMARK**

07 Civil 3397 (JGK)

Exhibit 5 to the Declaration of David Martin Semark
Dated 19th July 2007

From: Mark Seward [mailto:MSeward@m-f-b.co.uk]

Sent: 11 July 2007 09:47

To: Semark, David M.

Subject: ORHAN DEVAL - WP

For your info, wajilam have told me they will be appointing AG Scott

[privileged content redacted]

KEANE & MARLOWE, LLP
Attorneys for Defendants
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Christopher P. Keane (CPK-4394)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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DEVAL DENIZCILIK VE TICARET A.S.,

Plaintiff,

-against-

REPINTER INTERNATIONAL SHIPPING
CO. S.A. and MIACHART CORPORATION
LLC.,

Defendants.

**REPLY DECLARATION OF
DAVID MARTIN SEMARK**

07 Civil 3397 (JGK)

Exhibit 6 to the Declaration of David Martin Semark
Dated 19th July 2007

From: Mark Seward [mailto:MSeward@m-f-b.co.uk]
Sent: 19 July 2007 09:17
To: Semark, David M.
Subject: ORHAN DEVAL

DAVID

FYG. FORMAL NOTIFICATIONS ETC FOLLOW

MARK

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9/JUL/2007/THU 16:01

P. 001/001

T S OON & BAZUL
ADVOCATES & SOLICITORS

FAX TRANSMISSION

Date : July 19, 2007
Your Ref : MS/CMA/0144/262473
Our Ref : 200701667BA/GM/km
No. Of Pages: 01
To : BENTLEYS, STOKES AND
LOWLESS
Attention : Mr. Mark Seward
Fax No : 012-44 207 481 7978
Re : "ORHAN DEVAL" - WAJILAM EXPORTS PTE. LTD.

3 Raffles Place #08-01
Bharat Building
Singapore 048617
Tel : (65) 62233893
Fax : (65) 62236491

The contents of this fax are privileged and confidential. It is solely intended for the named recipient. If you have received this fax in error please contact +65 62233893 and return this fax and any copies immediately.

We do not accept service of Court documents by fax.

WITHOUT PREJUDICE

Dear Sirs,

We refer to your faxes of 13th July 2007.

We are presently confirming the availability of Mr. Anthony Graham Scott of M/s A.G. Scott as our clients' appointed arbitrator and will revert shortly on the same.

Yours faithfully,


BAZUL ASHHAB / MOHD GOUSH MARIKAN
bazul@oonbazul.com / goush@oonbazul.com

Cc: Clients

In association with T S OON & PARTNERS, Malaysia
Suite 22-8, Level 23 Menara Genesis
22 Jalan Sultan Ismail
50250 Kuala Lumpur



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REPINTER INTERNATIONAL SHIPPING
CO. S.A. and MIACHART CORPORATION
LLC.,

Defendants.

Exhibit 7 to the Declaration of David Martin Semark
Dated 19th July 2007

CHRISTOPHER J. W. MOSS

RSRB

12 JUL 2007

RECEIVED



L.M.A.A.

4, CHARLOTTE PLACE
WILTON ROAD
LONDON SW1V 1DP

TEL: 020 -7233 7032

FAX: 020 -7233 7035

E-MAIL: arbitration@christophermoss.com

Your ref: DMS/729267/00002

11th July 2007

By fax and by post

Attn: David Semark Esq
Reed Smith Richards Butler LLP
15 St Botolph Street
London
EC3A 7EE

Dear Sirs

"ORHAN DEVAL" – C/P DATED 16.11.06

Thank you for your fax of 10th July.

I am pleased to confirm my acceptance of the appointment which you kindly offered for me to act as arbitrator on behalf of your clients, Repinter International Shipping Co, as Disponent Owners, in respect of all disputes which have arisen under the charterparty with Charterers, Belarussian Shipping Co. My acceptance of this appointment is on the current LMAA Terms.

I look forward to hearing from you further and in the meantime take this opportunity of thanking you for the appointment and of enclosing a note of my appointment fee.

Kind regards


Christopher J W Moss

Enc

KEANE & MARLOWE, LLP
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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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DEVAL DENIZCILIK VE TICARET A.S.,

Plaintiff,

-against-

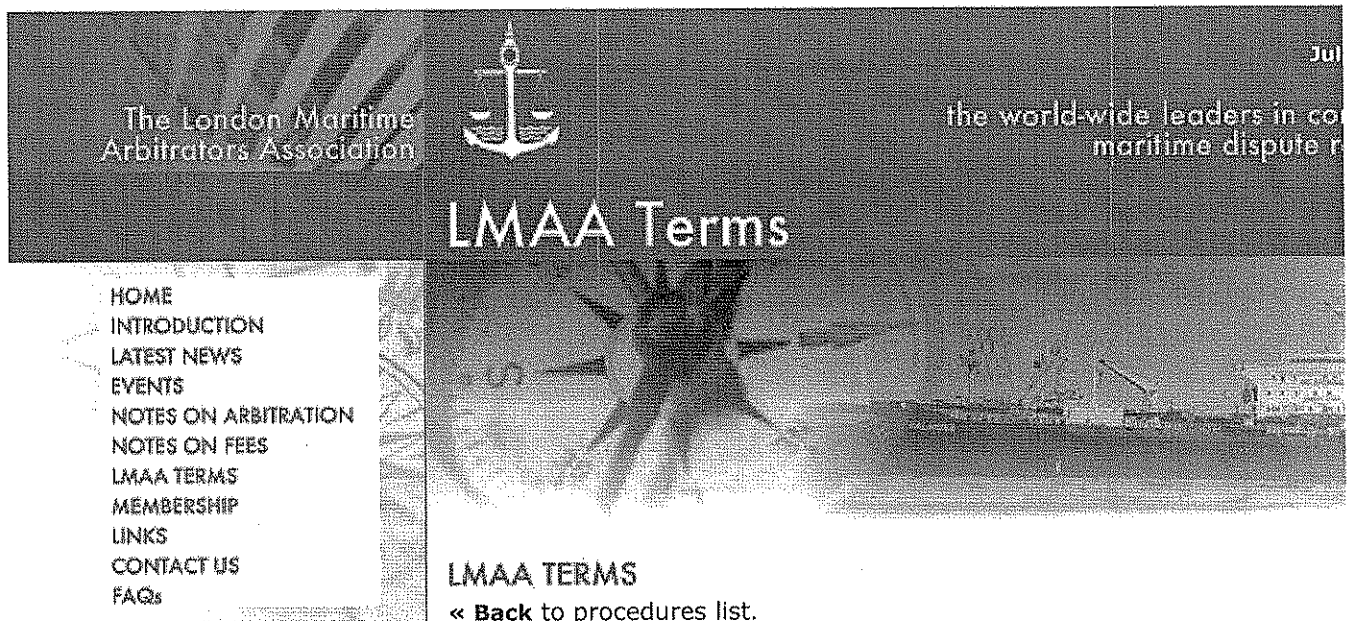
REPINTER INTERNATIONAL SHIPPING
CO. S.A. and MIACHART CORPORATION
LLC.,

Defendants.

**REPLY DECLARATION OF
DAVID MARTIN SEMARK**

07 Civil 3397 (JGK)

Exhibit 8 to the Declaration of David Martin Semark
Dated 19th July 2007



The London Maritime Arbitrators Association

the world-wide leaders in commercial maritime dispute resolution

LMAA Terms

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LMAA TERMS

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THE LMAA TERMS (2006)

« **Back** to categories list.

TERMS

Select an item below for further information within this category:

PRELIMINARY APPLICATION
THE ARBITRAL TRIBUNAL JURISDICTION
TRIBUNAL'S FEES
ARBITRATION PROCEDURE
INTERLOCUTORY PROCEEDINGS
POWERS OF THE TRIBUNAL
PRELIMINARY MEETINGS
SETTLEMENT
ADJOURNMENT
AVAILABILITY OF ARBITRATORS
THE AWARD
SERVICE OF DOCUMENTS
GENERAL

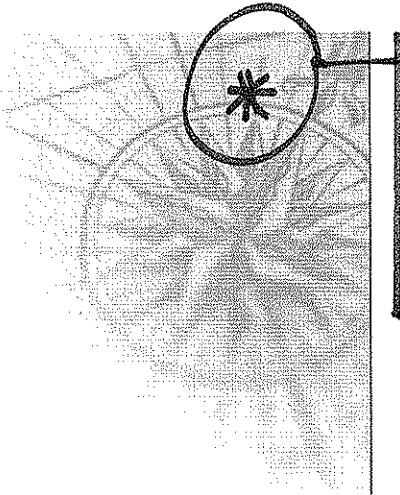
POWERS OF THE TRIBUNAL

14. In addition to the powers set out in the Act, the tribunal shall have the following specific powers to be exercised in a suitable case so as to avoid unnecessary delay or expense, and so as to provide a fair means for the resolution of the matters falling to be determined:

(a) The tribunal may limit the number of expert witnesses to be called by any party or may direct either that no expert be called on any issue(s) or that no expert evidence shall be called save with the leave of the tribunal.

(b) Where two or more arbitrations appear to raise common issues of fact or law, the tribunals may direct that the two or more arbitrations shall be conducted with and heard concurrently. Where such an order is made, the tribunals may give such directions as the interests of fairness, economy and expedition require including:





(i) that the documents disclosed by the parties in one arbitration shall made available to the parties to the other arbitration upon such condi as the tribunals may determine;

(ii) that the evidence given in one arbitration shall be received and admitted in the other arbitration, subject to all parties being given a reasonable opportunity to comment upon it and subject to such other conditions as the tribunals may determine.

(c) If a party fails to comply with a peremptory order of the tribunal to provide security for costs, then without prejudice to the power granted section 41(6) of the Act, the tribunal shall have power to stay that pa claim or such part of it as the tribunal thinks fit in its sole discretion.

Next Category: **THE FIRST SCHEDULE**

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Plaintiff,

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Exhibit 9 to the Declaration of David Martin Semark
Dated 19th July 2007

GST VAT NO. 24011003844 DT. 1/6/2006
CST NO. 24511003844 DT. 1/6/2006



UNITED SHIP CHANDLERS

SHIP REPAIRS, SHIP CHANDLERS & GENERAL CONTRACTORS AT KANDLA & OTHER GUJARAT PORTS

Plot No. 167, Sector 1/A,
GANDHIDHAM (Kutch) 370201.
(Gujarat) INDIA.

Tel. : (O) 227046 (R) 260488
Mobile : 9825227816
Fax : 0091 - 2636 - 227045
E-mail : uniteed@icenet.net

DELIVERY CHALLAN

WORK DONE REPORT

NAME OF THE VESSEL	: MV. ORHAN DEVAL
PORT	: KANDLA PORT (INDIA)
REF OF JOB	: STEVEDORE DAMAGE REPAIR
DATE	: 06.02.2007
PAGES	: 02 PAGES

AS PER THE INSTRUCTION OF AGENT THE FOLLOWING JOB CARRIED OUT:-
BELOW MENTION WHICH OF THE JOB WE ARE COMPLETED

- 01) HANDRAILS OF PORT SIDE PILOT WAY RAILINGS TOTALY DAMAGE IN 12 MTR AREA WHICH AS TO RENEW TOTALLY
- 02) HANDRAILS OF STBD SIDE PILOT WAY RAILINGS TOTALY DAMAGE IN 12 MTR AREA WHICH AS TO RENEW
- 04) HOLD NO 05 PORT SIDE ANGLE GUARD FOR HATCH COAMING CROP AND RENEW 75 X75 X08MM..02MTR..02PCS
- 05) CRANE NO:04 PORT SIDE MAST HOUSE RAILING DAMAGE SOME AS TO STARIGHT AND SOME AS TO RENEW REWAL SIZES IS 75 X75 X 08MM10MTR AND ROUND BAR 20MM WILL USE 12 MTR
- 05) HOLD NO: 04 PORT SIDE 2 MTR ANGLE RENEW 75 X75 X08MM
- 06) CRANE NO: 03 PORT SIDE MAST HOUSE ANGLE BAR DAMAGE ABOUT 4 MTR RENEW AND SOME AS TO STRAIGHT
- 07) # 3 PORT SIDE ANGLE BAR DAMAGE ABOUT 1.5MTR
- 08) CRANE NO: 02 MAST HOUSE CONNECTING GUARD DAMAGE RENEWAL AREA 6INCH PIPE 4 MTR
- 09) # 2 HATCH COAMING GUARD ANGLE DENTED SOME AS TO MAKE STARAIGHT AND SOME AS TO RENEW ABOUT 8 MTR 75 X75
- 10) CRANE NO: 01PORT SIDE MAST HOUSE RAILING DAMAGE SOME AS TO STARIGHT AND SOME AS TO RENEW REWAL SIZES IS 75 X75 X 08MM10MTR AND ROUND BAR 20MM WILL USE 12 MTR

Continue to next page

Received the Contents in good condition

For UNITED SHIP CHANDLERS





SHIP REPAIRS, SHIP CHANDLERS & GENERAL CONTRACTORS AT KANDLA & OTHER GUJARAT PORTS

Tel. : (O) 227046 (R) 260488
Mobile : 9825227816
Fax : 0091 - 2836 - 227045
E-mail : uniteed@icenet.net

~~M) PIPE GUARD DAMAGE ABOUT 1 MTR OF 6 INCHES~~

12) FORE CASTEL RAILING DAMAGE 35 MM PIPE ABOUT 6 MTR

13) FORE CASTEL STBD SIDE SILING ROLER GUARD WAS BROKEN WHICH AS TO MAKE IN PROPER PLACE

14) CRANE NO:01 STBD SIDE MAST HOUSE RAILING DAMAGE ABOUT 35 MM PIP ABOUT 04MTR AND ANGLE BAR 75 X75 X08MM ...05MTR

15) #02 AFT ANGLE GUARD FOR HATCH COAMING ABOUT 04 MTR OF ANGLE BAR DAMAGED

16) SHIP SIDE ANGLE GUARDS FOR AIR VENT AS TO RENEW ABOUT 1 MTR 75 X75 X08MM

12) CRANE: NO 02 PLAT FORM RAIL DAMAGE ABOUT 06 MTR ANGLE BAR AND 08MTR OF ROUND BAR

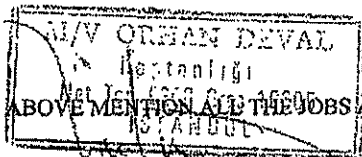
18) CRANE NO: 02 MAST HOUSE PIPE GUARD 6 INCHES DAMAGE AS TO RENEW ABOUT 4 MTR..1 PCS

19) ANGLE GUARD DENT ABOUT 4 MTR 1 PCS

20) ANGLE GUARD ABOUT 5 MTR CROP AND RENEW AND SOME AS TO MAKE STRAIGHT

21) AFT LADDER PIPE RAILING CROP AND RENEW ABOUT 0.5MTR FOR 35MM PIPE

22) TST 2 STBD SIDE PIPE CRACK FROM THE DECK IN WHICH WATER IS LEAKING WHICH MAKE IT TO PROPER WORKING CONDITONS



ABOVE MENTION ALL THE JOBS ARE SATISFIED WITH CHIEF OFFICER

CHIEF OFFICER

DESPITE OF SUB CHARTERS MESS WASILAM EXPORTS CONFIRMATION OF THE HEREBY UNDERTAKE
TO REPAIR ALL SUCH REPORTED DAMAGES AT DISPORT 18 KANDAR, WEST COAST INDIA AT OUR COST AND TIME.
SAME DAMAGED PARTS (THE DAMAGES ALREADY REPORTED TO THE CHARTERS) ON THE DECK AND ESPECIALLY THE
AMMO/CRND STANCHIONS ARE NOT REPAIRED BY THE SHORE LABOUR AND DEMANDED FROM ME TO REPAIR OF MY
NOW AGAINST USD 2000 WHICH IS NOT POSSIBLE DUE TO REPARASONS STATED PREVIOUSLY. JUST NOW WE
HAVE BEEN INFORMED BY THE AGENT TO LEAVE THE BERTH UPON COMPLETION OF SUCH AS PER HARBOUR MASTER
INSTRUCTION. UNDER THE CIRCUMSTANCES, I'M OBLIGED TO LEAVE THE BERTH AND DROP ANKURA ON ROAD IN ORDER TO COMPLETE
THE REPAIR ON ROAD. UNDER MY SATISFACTION.

Received the Contents in good condition

Received the Contents in good condition FOR UNITED SHIP CHANDLERS
UPON COMPLETION OF REPAIR WORKS. WILL REPORT TO THE CONCERNED PARTIES FOR REVIEW OF THE
VSL TOGETHER WITH BOB.

FOR UNITED SHIP CHANDLERS

FOR UNITED SHIP CHANDLERS
AND AGENTS FOR REPAIR OF SHIPS

KEANE & MARLOWE, LLP
Attorneys for Defendants
REPINTER INTERNATIONAL SHIPPING
CO. S.A. and MIACHART CORPORATION LLC
197 Route 18 South Suite 3000
East Brunswick, New Jersey 08816
(732) 951-8300
Mary Ann C. Marlowe (MM-0723)
Christopher P. Keane (CPK-4394)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
DEVAL DENIZCILIK VE TICARET A.S.,

**REPLY DECLARATION OF
DAVID MARTIN SEMARK**

Plaintiff,

-against-

07 Civil 3397 (JGK)

REPINTER INTERNATIONAL SHIPPING
CO. S.A. and MIACHART CORPORATION
LLC.,

Defendants.

Exhibit 10 to the Declaration of David Martin Semark
Dated 19th July 2007

WAJILAM EXPORTS (SINGAPORE) PRIVATE LIMITED

63 ROBINSON ROAD, #05-20 AFRO ASIA BUILDING, SINGAPORE 068894

TEL: 62245561 FAX: 62254932

CO.REG NO: 198401487E

EMAIL: tarun@wajilam.com.sg

08.02.2007

To: Belarusian Shipping Co., Minsk
cc.: Toyo Pacific / Tokyo

Subj: MV ORHAN DEVAL - Stevedore damage at load port and discharge port

Please note the correct documents are as per attachments herewith:

1. ***Discharge port Statement of facts is of only 2 pages as attached.***

The 3 pages that the Master has sent to you are manipulated/forged.

Please note the differences between the correct SOF in original, which our agents have, and the 3 copies which the Master has sent to you:

- a) Handwritten remark by the Master, "Master's remark attached page 3" does not appear on the 1st page of the original SOF which our agents are holding. *There was no 3rd page at the material time.*
- b) The 2nd page of the SOF which the Master has sent is forged with the agent's signature. The original, correct one with our agent only has the Master's signature without a rubber stamp but with the agent's own signature.

2. The Master has duly signed a certificate confirming that the stevedores discharged the cargo without causing any damage to the ship and/or the ship's gears and fittings. ***A duly stamped and signed copy is attached.***

No discharge port damages were pointed out to the agent as having remained unattended. The 2-page list comprising of 37 items are prepared by the Master as an after-thought after sailing and hence, you will note that it does not bear the agent's signature.

3. Load port damages were repaired in part. For those damages which could not be finished during the time of the vessel's discharge, materials were provided together with a cash payment of US\$3500 paid to the Master, for crew labor. The Master refused to sign for this cash payment. Our agent can vouch, in writing, that such cash was paid to the Master and we can counter-sign such letter.

Repair 'Work Done Report' has been duly signed by the Master for almost 20 to 22 items.

Further, vide 2 pages of delivery challans, the Master has acknowledged receipt of materials for repairs that could not be done while the ship was at berth, discharging cargo.



WAJILAM EXPORTS (SINGAPORE) PRIVATE LIMITED

63 ROBINSON ROAD, #05-20 AFRO ASIA BUILDING, SINGAPORE 068894

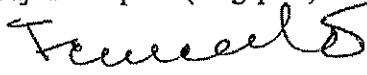
TEL: 62245561 FAX: 62254932

CO.REG NO: 198401487E

EMAIL: tarun@wajilam.com.sg

4. The Master has duly signed off-hire bunker survey certificate at the time of re-delivery. A copy is attached herewith.
5. *Enclosed is a copy* of our mail message dtd. 3rd Feb. 2007, 12:44 pm and Master's response of same date at 2:06 pm. In the Master's message, we draw your attention to "I will try for power supply and discuss with agent after berthing but this subject will stay between us..."
6. *A copy of a mail message dtd. 5th Feb. 2007, 6:24 pm* from our agents, with an attachment titled 'Certificate' and dtd. 6th Feb. 2007, certifying that Rishi Shipping, Kandla agents have arranged 04 generator(s) one each for all 04 ship's cranes for discharge...
This certificate dtd. 6th Feb. 2007 was given to the agent on 5th Feb. to defraud disponent owners, viz. Belarusian Shipping Co.
Our agent was told to give the Master US\$4000 in exchange for this certificate and to debit Belarusian hire charges for the shore generators. Our agent felt compelled to pay US\$2000 in order to maintain good humor. The Master, in fact, provided power to all the ship's gears except for the time stated in the SOF.
7. So in reality, the problem is not the non-repair or incomplete repair of load or disport stevedore damages, but that the Master, to follow his personal agenda of extracting money on one pretext or another, has put the performance of the current C/P in jeopardy and dispute.
8. There is, and was, a definite purpose to the "BIMCO STANDARD STEVEDORE DAMAGE CLAUSE". It is to prevent abuse and exploitation by Owners/Master in holding any charterer at ransom by holding the vessel on charterer's time for non- or incomplete repairs of stevedore damages, if any.
9. We were bound by C/P terms, and we did what we did to comply to clause 32 of the C/P. the owners, too, have recourse to charterers for incomplete repairs under this clause. Hence holding the vessel on anyone's time serves no purpose.
10. The most appropriate thing for any owner to do is to accept re-delivery under the C/P, and to get on with the next voyage, with both charterer's and owner's rights reserved under clause 32 BIMCO STANDARD STEVEDORE DAMAGE CLAUSE.

Yours faithfully,
Wajilam Exports (Singapore) Pte Ltd.


Tarun Mehta

MV ORHAN DEVAL
OF 03.02.2007.

PORT OF KANDLA.
Dated : 06.02.2007.

STATEMENT OF FACTS

Name of the vessel : MV ORHAN DEVAL
Name of Master : Capt. Uzmez Mustafa.
Load Port : BINTULU & SARAWAK, MALAYSIA
Discharge Port : Kandla [India].

	<u>DAY</u>	<u>DATE</u>	<u>TIME</u>
Vessel arrived at OTB Kandla	:	Saturday	03.02.07 1010 hrs.
Radio free pratique granted	:	Saturday	03.02.07 1010 hrs.
Pilot boarded at OTB	:	Saturday	03.02.07 1400 hrs.
Vessel made all fast at berth No. VIII.	:	Saturday	03.02.07 1600 hrs.
Customs inward entry granted	:	Saturday	03.02.07 1710 hrs.
Discharging operation commenced	:	Saturday	03.02.07 1740 hrs.
Discharging operation completed	:	Tuesday	06.02.07 <u>2330</u> hrs.
Total cargo / quantity discharged as			
Per manifest	:	7895 pieces = 20119.9025 CBM Logs.	
Vessel schedule for sailing	:	Wednesday 07.02.07	0200 hrs.
Vessel sailed DOLSP Kandla	:	Wednesday 07.02.07	___ hrs.

Saturday

Sunday

Holiday.

03.02.07 [Worked]

04.02.07 [Worked]

NIL.

Port working hours	:	0001-0730,	0800-1600	1630-2400.
Port Recess Timings	:	0400-0430,	1200-1230	2030-2100.

Hooks / Hatch's made available for discharging : 04 / 05. [Four / Five]

- All the hatch's were opened by ship's crew prior commencement of discharging and were closed after completion of discharging.

Cont....Page..2/-

: 2 :

- Stevedores have discharged the cargo without causing any damage to the ship and or ship's gear and fittings. They have discharged the cargo properly to our entire satisfaction.
- Kandla Port Trust authorities have ordered all the vessels to work on overtime from commencement to till completion of discharge / loading vide general circular No. TF/SH/2103/442 dated 22nd March 1983.
- Though vessel completed discharging at _____ hrs on 06.02.2007 but could not sail immediately due to want of suitable tide.
- Have made arrangements for on arrival discharging at outer roads by barges and accordingly informed Master but suddenly at last moment vessel informed that vessel can not provided power to shore grabs [reasons best known to Master] and being nature cargo same can not be discharged by manually hence all arrangements canceled for barge discharging on arrival, therefore from arrival i.e. on 03.02.07 at 1010 hours to till commencement of discharging at 1740 hours on 03.02.07 vessel treated as off hire in terms of C/P & upon berthing arranged shore generator on Owner's / Despondent Owner's A/C @ 730/- per shift / generator for supplying power to shore grabs as vessel failed to provide power to shore grabs.

Details of Generator used for shore grabs during discharging on Owner's A/C:-

<u>Date</u>	<u>Shift</u>	<u>No of Generator.</u>
03.02.07	Illrd [from commencement]	03.
04.02.07	Ist	03.
	IInd	03.
	IIIrd [till 2100 hours]	03.

"Singed subject to terms, conditions and exception of the relevant charter party/ contract governing to this shipment."

RISHI SHIPPING.
As Agent

MASTER
MV ORHAN DEVAL

PORT OF KANDOLA

CERTIFICATE

This is to certify that RISHI SHIPPING

Handling Agent & Stevedores

have worked as our stevedores and

have ~~loaded~~ / discharged of 711095

*M.T. 7895 PCS
20:19.9035 P.M*

Metric Tonnes

of

at Jetty berth

No.

/Stream. They have ~~loaded~~ / discharged

the cargo - without causing any damage to the ship and / or

ship's gears and fittings. They have ~~loaded~~ / discharged the

*cargo and trimmed stowed the cargo property to my entire
satisfaction.*

Master / Chief Officer

M.V. ORHAN

Date: 8/2/2007

KEANE & MARLOWE, LLP
Attorneys for Defendants
REPINTER INTERNATIONAL SHIPPING
CO. S.A. and MIACHART CORPORATION LLC
197 Route 18 South Suite 3000
East Brunswick, New Jersey 08816
(732) 951-8300
Mary Ann C. Marlowe (MM-0723)
Christopher P. Keane (CPK-4394)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
DEVAL DENIZCILIK VE TICARET A.S.,

Plaintiff,

-against-

REPINTER INTERNATIONAL SHIPPING
CO. S.A. and MIACHART CORPORATION
LLC.,

Defendants.

**REPLY DECLARATION OF
DAVID MARTIN SEMARK**

07 Civil 3397 (JGK)

Exhibit 11 to the Declaration of David Martin Semark
Dated 19th July 2007

Semark, David M.

From: William Chetwood [WChetwood@bentleys.co.uk]
Sent: 13 April 2007 17:41
To: Semark, David M.
Cc: Mark Seward; wjchetwood@aol.com
Subject: RE: Orhan Deval C/P dd 16.11.06

Further to this matter, our clients have had a frustrating few days trying to obtain quotations to do the repair work requested by owners. The position has, frankly, not been helped by the changing nature of the demands for repairs and the lack of notice of the intention, for example, to call in class. All that is however a matter for discussion on another day.

As you know, our clients do not consider that the repairs are for their account. Nevertheless, our clients' intention is to press the repairers as hard as possible to produce the quotations. Unless these show something quite unexpected (which for reasons that I will not go into now is highly unlikely), our clients intend to arrange for the repairs that you have listed in your below e-mail to be effected so that the vessel can resume her charter service. They will do so and pay for them in the first instance, of course, under protest/reserve. Our clients had hoped to have the quotations within today (hence the delay in replying to your e-mail) but despite pressing hard for them, nothing has yet been received and it would appear more likely that they will be to hand tomorrow.

As regards hire, our clients fully intend to comply with their charterparty obligations. However, their view is that the vessel is currently offhire and no payment is therefore currently due. All of this is likely to become largely academic early next week when the repairs are effected. Our clients are also looking into the lawsuit lodged in New York as a matter of urgency to ensure that this does not interfere with payments to owners.

Our clients also reserve their rights generally.

Finally, please note that our office power is due to be interrupted in just over an hour. At that stage, we will not be able to see e-mails until Sunday night. If you send any messages please send them to the normal address but with copy to the AOL address set out above.

Kind regards

William Chetwood

KEANE & MARLOWE, LLP
Attorneys for Defendants
REPINTER INTERNATIONAL SHIPPING
CO. S.A. and MIACHART CORPORATION LLC
197 Route 18 South Suite 3000
East Brunswick, New Jersey 08816
(732) 951-8300
Mary Ann C. Marlowe (MM-0723)
Christopher P. Keane (CPK-4394)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
DEVAL DENIZCILIK VE TICARET A.S.,

Plaintiff,

-against-

REPINTER INTERNATIONAL SHIPPING
CO. S.A. and MIACHART CORPORATION
LLC.,

Defendants.

**REPLY DECLARATION OF
DAVID MARTIN SEMARK**

07 Civil 3397 (JGK)

Exhibit 12 to the Declaration of David Martin Semark
Dated 19th July 2007

Technical Marine

المكتب الهندسي للمقاولات

Ships Repairs – Ship Chandler – Workshop – Spare Parts

Suez on : 17 April, 2007

Subj: m/v " ORHAN DEVAL " – Repairing Works Quotation

Dear Sir,

Thank you for your inquiry, and we have pleasure to quote as follows:

Deficiency	Scope of work	Quantity	Unit Price USD	Total Price USD
Double bottom tank no.2 stbd Side air vent found broken	-Supply and fitting a new vent head	1	250.00	250.00
Stbd top side tank no.3 air vent Cover found damage	-Fabrication and fitting a new cover	1	150.00	200.00
The hand rail for aft Australian Ladder found bent two cargo Holds no. 1,2,3,4,5	-Removing the bent hand rail. -Supply and fixing hand rails	5	400.00	2000.00
Cargo hold no.2 hatch cover After stopper in stbd side found Broken.	-Removing the broken stopper. -Fabricating and fixing by welding A new stopper as per scantlings	1	350.00	350.00
Hold No.1: The flange of vertical web stiffeners on the forward Bhd at cargo hold no.1; nos.1,3And 4 counted from stbd side Were found broken in different Locations up to 2.5 meters from Tank top	-Renewal the broken parts of flanges As per scantlings	4	250.00	1000.00
Hold No.1: The flanges for the Frame lower brackets at frames No. 170,171,182 port side were Found broken at the web.	-Renewal the broken parts of flanges As per scantlings	3	200.00	600.00
Hold No.1: The frame lower brackets at frames no. 180 stbd Was found broken at the web	- Renewal the broken web	1	200.00	200.00
Hold No.2: flange of vertical web stiffeners on the forwards bhd Nos. 1,2,3 and 4 counted from Stbd side were found bent and Broken in different locations up To 2.5 meters from tank top	-Renewal the broken parts of flanges As per scantlings	4	250.00	1000.00

Fatmawad



Johar

Hold No.3: flange of vertical web stiffeners on the forward bhd Nos. 1,2,3 and 4 counted from Stbd side were found bent and broken in different locations up to 2.5 meters from tank top	-Renewal the broken parts of flanges As per scantlings	4	200.00	800.00
Hold No.4: The flange of vertical web stiffeners on the after bhd Nos. 1&4 counted from port Side found bent and broken in Different locations up to 1.5 Meters from tank top.	-Renewal the broken parts of flanges As per scantlings	2	200.00	400.00
Hold No.4: The flange of vertical Web stiffeners upper welding iwo Australian ladder on the after bhd Nos.2 counted from port side found detached.	-Renewal the broken parts of flanges As per scantlings	1	200.00	200.00
Hold No.5: The flange of vertical Web stiffeners on the after bhd Nos. 1&2 counted from port side Found bent and broken in Different locations up to 2.5 Meters from tank top	-Renewal the broken parts of flanges As per scantlings	2	250.00	500.00
TOTAL USD				7500.00

Terms of payment:

- 50% Down payment with order.
- 50% Upon completion of works.

Time required to carry out works:

4 Working days + 1 Day for preparation for works

- N.B: Works can be carried out either in the present position of the vessel or inner anchorage.
- N.B: Material and equipment handling ashore and onboard are including with condition by facilitating ship's cranes for handling onboard.
- N.B: welding permissions included.
- N.B: Waiting time on board due vessel's reasons will be accounted as USD 200 / hr. if any.
- N.B: Price excluding any other works.
- N.B: motor boats transportation & relevant expenses included.
- N.B: Works procedure and materials used will be satisfied to ABS Class.

We hope that our quotation meets your request.

Thank you
Best regards

Eng. Fathi S.M.Awad

Fat awad

Tech. Dept. Manager



Eng. Abdul Mohsen Osman

General Manager

FILE : ORHAN DEVAL offer

Address : 12 Tharwat st - Port Tawfiq - Suez - Egypt
Phone & Fax : +20 823 222 461 - 3330 751 - 3 222 012

e-mail : mohsen_osman@seatransegypt.com
www.seatransegypt.com

التليفون : ٣٢٢٢٠١٢ - ٣٣٣٠٧٥١ - ٢٢٢٢٤٦١
فاكس : ٣٢٢٢٠١٢ - ٣٣٣٠٧٥١ - ٢٢٢٢٤٦١

Technical Marine (Suez - Egypt)

المكتب الهندسي للتقنيات

Ship Repairers - Spare Parts Suppliers - Contractors

Tel: 00 20 62 8222461 / 8226886 / 3296751

Fax: 00 20 62 8226886 / 8 222812

Email: mohsen_osman@techrantegypt.com

Dear Sirs,

We have pleasure to introduce our company as a private ship repairers company in Egypt since 1982.

We offer our services in mostly all Egyptian ports: Suez Port, & Red Sea ports, Port Said and Alexandria. We have our own staff, technicians and engineers who are specialized in almost all branches of ship repairs.

We have the advantages of quick response, saving time and competitive prices.

We can offer the following services:

- Steel works
- Piping works
- Tank works
- Reconditioning of Liners, maintenance & overhauling
- Cylinder heads & Cylinder covers
- Cast iron welding
- Propeller reconditioning & balance
- Turbo charger repairs & Spare parts
- Main engines repairs & overhauling
- Diesel generators maintenance & overhauling
- Pumps maintenance & overhauling
- Winches & cranes maintenance & overhauling
- Hydraulic works
- Control systems maintenance
- Electrical repairs
- Rewinding electric motors.
- Reefer repairs & maintenance, PTI
- (with the aid of computer)
- Refrigerating systems (maintenance & repairs)
- Air conditioning systems (maintenance & repairs)
- Underwater cleaning & maintenance
- Propeller shaft bearing supply (Cutless rubber bearing & Simplex)
- Propeller & Rudder packing
- Marine paint & zinc anodes supply.
- Anchors & chains supply.
- Fender & rubber products supply
- Oil seals, O-rings & mechanical seals
- Navigation equipment supply & service.
- Safety equipment supply & service with certificates.
- Engine & deck stores supply

Engineer/A.M.Osman



PILS ACTIVITY

Technical Marine

المكتب الهندسي للمقاولات

Ships Repairs – Ship Chandler – Workshop – Spare Parts

Suez on : 13 April, 2007

To: Messrs / El Hamamsy Marine Services Ltd.
Kind att : Eng. Mostafa El Hamamsy
Subj: m/v " ORHAN DEVAL " – Repairing Works Quotation

Dear Sir,

Thank you for your inquiry, and we have pleasure to quote as follows:

Deficiency	Scope of work	Quantity	Unit Price USD	Total Price USD
Outfitting: Crane no.4, hydraulic drain In port side found pressed in.	-Renewal the pressed in elbow by New one	1	30.00	30.00
Outfitting: Cargo hold no.3 hatch Cover pontoon, flat bar stiffener at Port side edge found bent.	-Renewal the bent stiffener by New one.	1	80.00	80.00
Outfitting: Air pipe 1.0 inch at port Forward end of cargo hold no. 3 Found bent.	-Removing the old pipe. -Supply and fixing a new pipe.	1	80.00	80.00
Outfitting: Cargo hold no. 2 hatch Cover, stbd side fixed track way Bracket no. 3 counted from forward Found bent.	-Renewal the bent bracket by New one as per scantlings.	1	50.00	50.00
Outfitting: Cranes no. 1,2,3,4 and 5 Crane platform guards railing Damaged & ladder guard twisted.	-Removing the damaged rails and Ladder guards. -Fabricating and fixing by welding new rails and guards as per scantlings	5	500.00	2500.00
Outfitting: Crane no. 2 mast house Stbd side railing damaged.	-Removing the damaged rails -Fabricating and fixing by welding new rails	1	1900.00	1900.00
Outfitting: Cargo holds no. 1,2,3,4 And 5 hatch covers drain channels Inner edge found slightly bent	-Removing by cutting flame the Bent edges. -Supply and fitting by welding New edges as per scantlings. N.B: Edges to be renewed are About 280 meter long, 15 cm Width 25 mm thick.	5	4000.00	20000.00
Outfitting: Collapsible log Stanchions On stbd & port side found bent/ broken	- Fabrication new Collapsible log Stanchions as per scantlings.	10	4000.00	40000.00
Outfitting: Collapsible log Stanchions On stbd & port side found bent/ broken	-Repairing & partial renewals of new Collapsible log Stanchions	20	1000.00	20000.00
Outfitting: Scattered Stanchions at The top of permanent log Stanchions stbd & port side found broken	- Renewal the broken Scattered Stanchions at The top of permanent log Stanchions	1	800.00	800.00

Outfitting: Cargo hold no.1 hatch Cover forward pontoon edge found Slightly dent	Renewal the dent edge	1	60.00	60.00
Hold No.1: After bhd, air vent pipe guard plates All found bent from top to bottom, 25 Pieces size 750 x 50 x 12 mm	-Renewal the mentioned plates By new ones.	25	20.00	500.00
Hold No.1: The flanges for the frame lower brackets at frames no. 170, 172, 174, 176, 177, 178, 179, 184, 185, 186, 190, 191, and 193 starboard Were found slightly dented.	-Removing the dented flanges. -Fabricating and welding new Flanges as per scantlings.	13	80.00	1040.00
Hold No.1: The flange of hatch coaming (forward & aft) for cargo hold no.1 Was found slightly dented.	-Removing the dented flange. -Fabricating and welding new Flanges as per scantlings. N.B: about 30 meter long Will be renewed.	1	1800.00	1800.00
Hold No.1: The flanges for the frame lower brackets at frames no. 173, 174, 175, 176, 177, 178, 179, 180, 184, 185, 186, 189, 190, 191, 192 and 193 port side Were found slightly dented.	-Removing the dented flanges. -Fabricating and welding new Flanges as per scantlings.	16	80.00	1280.00
Hold No.2: The flanges for the frame lower brackets at frames no. 155, 154, 153, 152, 151, 136, 135 starboard Were found slightly dented.	-Removing the dented flanges. -Fabricating and welding new Flanges as per scantlings.	7	80.00	560.00
Hold No.2: The flanges for the frame lower brackets at frames no. 146, 157, 158, 160, 161, 153, 142, 145 port side Were found slightly dented.	-Removing the dented flanges. -Fabricating and welding new Flanges as per scantlings.	8	80.00	640.00
Hold No.2: The flange of hatch coaming (forward & aft) for cargo hold no.2 Was found slightly dented.	-Removing the dented flange. -Fabricating and welding new Flanges as per scantlings. N.B: about 30 meter long Will be renewed.	1	1800	1800.00
Hold No.2: Support of the pipe for temperature sensors found broken, and the pipe Itself found bent.	-supply and fixing a new pipe With a new support.	1	80.00	80.00
Hold No.4: The flange of vertical web stiffeners On the after bhd nos. 3, 4, 5 counted from port side found slightly dented	-Removing the dented flanges. -Fabricating and welding new Flanges as per scantlings.	3	1800.00	5400.00
Hold No.4: The flanges for the frame lower brackets at frames no. 69, 71, 73, 74, 79, 80, 81, 82, 83, 84, 85, 87, 93, 96, 99 port side Were found slightly dented.	-Removing the dented flanges. -Fabricating and welding new Flanges as per scantlings.	15	50.00	750.00
Hold No.4: The flanges for the frame lower brackets at frames no. 69, 70, 72, 75, 76, 77, 79, 80, 81, 83, 86, 88, 91, 92, 93, 94, 96, 97, 99 starboard Were found slightly dented.	-Removing the dented flanges. -Fabricating and welding new Flanges as per scantlings.	19	50.00	950.00

Hold No.5: The flanges for the frame lower brackets at frames no. 34,36,41,44, 46,51,52,55,60,63,64,65, port side Were found slightly dented	-Removing the dented flanges. -Fabricating and welding new Flanges as per scantlings.	12	50.00	600.00
Hold No.5: The flanges for the frame upper brackets at frames no.45,63,65 port side Were found slightly dented	-Removing the dented flanges. -Fabricating and welding new Flanges as per scantlings.	3	50.00	150.00
Hold No.5: The flanges for the frame lower brackets at frames no. 34,35,36,38, 40,41,43,46,47,48,52,53,56,57,58, 59 starboard Were found slightly dented.	-Removing the dented flanges. -Fabricating and welding new Flanges as per scantlings.	16	50.00	800.00
Hold No.3: The flanges for the frame lower brackets at frames no.2,3,4,5,7,10, 11,17,24 starboard Were found slightly dented.	-Removing the dented flanges. -Fabricating and welding new Flanges as per scantlings.	9	50.00	450.00
Hold No.3: The flanges for the frame lower brackets at frames no.3,6,8,10,11, 13,16,18,19,20,22 port side Were found slightly dented	-Removing the dented flanges. -Fabricating and welding new Flanges as per scantlings	11	50.00	550.00
Double bottom tank no.2 stbd Side air vent found broken	-Supply and fitting a new vent head	1	300.00	300.00
Stbd top side tank no.3 air vent Cover found damage	-Fabrication and fitting a new cover	1	050.00	050.00
The hand rail for aft Australian Ladder found bent two cargo Holds no. 1,2,3,4,5	-Removing the bent hand rail. -Supply and fixing hand rails	5	150.00	750.00
Cargo hold no.2 hatch cover After stopper in stbd side found Broken.	-Removing the broken stopper. -Fabricating and fixing by welding A new stopper as per scantlings	1	150.00	150.00
Hold No.1: The flange of vertical web stiffeners on the forward Bhd at cargo hold no.1; nos.1,3And 4 counted from stbd side Were found broken in different Locations up to 2.5 meters from Tank top	-Renewal the broken parts of flanges As per scantlings	4	50.00	200.00
Hold No.1: The flanges for the Frame lower brackets at frames No. 170,171,182 port side were Found broken at the web.	-Renewal the broken parts of flanges As per scantlings	3	50.00	150.00
Hold No.1: The frame lower brackets at frames no. 180 stbd Was found broken at the web	- Renewal the broken web	1	50.00	50.00
Hold No.2: flange of vertical web stiffeners on the forwards bhd Nos. 1,2,3 and 4 counted from Stbd side were found bent and Broken in different locations up To 2.5 meters from tank top	-Renewal the broken parts of flanges As per scantlings	4	50.00	200.00

Hold No.3: flange of vertical web stiffeners on the forwards bhd Nos. 1,2,3 and 4 counted from Stbd side were found bent and Broken in different locations up To 2.5 meters from tank top	-Renewal the broken parts of flanges As per scantlings	4	50.00	200.00
Hold No.4: The flange of vertical web stiffeners on the after bhd Nos. 1&4 counted from port Side found bent and broken in Different locations up to 1.5 Meters from tank top.	-Renewal the broken parts of flanges As per scantlings	2	50.00	100.00
Hold No.4: The flange of vertical Web stiffeners upper welding lwo Australian ladder on the after bhd Nos.2 counted from port side Found detached.	-Renewal the broken parts of flanges As per scantlings	1	50.00	50.00
Hold No.5: The flange of vertical Web stiffeners on the after bhd Nos. 1&2 counted from port side Found bent and broken in Different locations up to 2.5 Meters from tank top	-Renewal the broken parts of flanges As per scantlings	2	100.00	200.00
TOTAL USD				105250.00
Motor boats, fiscal stamps and permissions				1750.00
G. TOTAL				107000.00

Terms of payment:

- 50% Down payment with order.
- 50% Upon completion of works.

Time required to carry out works: Three weeks

N.B: Floating cranes or shore cranes will be owners account, if any.

N.B: Welding permissions requested by authorities will be owners account, if any,

N.B: waiting time on board due ship's reasons will be account as usd 200 / hr. if any.

N.B: price excluding any other works.

We hope that our quotation meets your request.

Thank you
Best regards

Eng. Fathi S.M.Awad

F06/FATHI

Tech. Dept. Manager

Eng. Abdul Mohsen Osman



General Manager

TECHNICAL MARINE SERVICE

FILE : ORHAN DEVAL

Address : 12 Tharwat st. - Port Tawfiq - Suez - Egypt
Phone & Fax : +20 623 222 461 - 3330 751 - 3 222 012

العنوان : 12 ش تروفت ، بورسوقى ، السويس ، جمهورية مصر العربية
تليفون & فاكس : +20 62 222461 - 330751 - 222012

e-mail : mohsen_osman@seatransegyp.com
www.seatransegyp.com



Suez shipyard Co.

شركة ترسانة السويس البحرية
أحدى شركات هيئة قناة السويس

TELEFAX

To : El Hamamsy Marine Services Ltd.
Attention: Eng. Mostafa El Hamamsy
Fax : 03 4863838

NO.OF PAGES (2)
(INCL.FRONT PAGE)

DATE: 14th April, 2007
FROM: Suez Shipyard

FAX NO.(20) 62 3227 848

**Subject: Suez Shipyard Quotation for the required repairs of M/V
Orhan Deval**

Dear sir,

Reference is made to your request for quotation for the required repairs of the subject vessel.

Please be noted that Suez Shipyard team has made the required ship check to determine the scope of work on M/V Orhan Deval and briefs the repair quotation as follows :

	Unit Price USD	Qty	Total Price USD
- Mooring the vessel alongside the floating dock per day	550	20	11000
- Steel work inside the cargo holds	3600	12	43200
- Repair of the guard rail of the cranes			1500
- Pipe works (vents etc..)			4500
- Ladders for cranes			10000
- Fairing in place in 30 locations			4000
- Repair of handrails in different Locations			7500
- Stanchion repairs 80 in number (straightening, Replacement of about 2 tons, Sand blasting and painting)	600	80	48000

It is to be noted that to carry out the job the vessel has to be moored alongside the floating dock for a period of 20 days. All the movements of the vessel to be handled by the agent. All paints are owner supply.

In the meantime we stay entire disposal
Best regards

Manager Technical Department

Eng. Mohamed Hanafy

Mobile : +20 12 2477912
e-mail : mh_hanafy@hotmail.com



Suez shipyard Co.

شركة ترسانة السويس البحرية

شركة ترسانة السويس البحرية
أحدى شركات هيئة قناة السويس

TELEFAX

Subject: Suez Shipyard Quotation for the required repairs of M/V Orhan Deval

Dear sir,

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- Fairing in place in 30 locations			4000
- Repair of handrails in different Locations			7500
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It is to be noted that to carry out the job the vessel has to be moored alongside the floating dock for a period of 20 days. All the movements of the vessel to be handled by the agent. All paints are owner supply.

In the meantime we stay entire disposal
Best regards

Manager Technical Department

Eng. Mohamed Hanafy

Mobile : +20 12 2477912

e-mail : mh_hanafy@hotmail.com

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(732) 951-8300
Mary Ann C. Marlowe (MM-0723)
Christopher P. Keane (CPK-4394)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
DEVAL DENIZCILIK VE TICARET A.S.,

**REPLY DECLARATION OF
DAVID MARTIN SEMARK**

Plaintiff,

-against-

07 Civil 3397 (JGK)

REPINTER INTERNATIONAL SHIPPING
CO. S.A. and MIACHART CORPORATION
LLC.,

Defendants.

Exhibit 13 to the Declaration of David Martin Semark
Dated 19th July 2007

From: RAOSHIPMAN@aol.com [mailto:RAOSHIPMAN@aol.com]
Sent: Friday, April 20, 2007 11:52 AM
To: operations@miachart.com
Subject: Orhan Deval/Bsc

4-20-07
gd

Robert-Jr/Ralph

Hve just recvd flwng frm Chrtrs

FROM BSC

Re. Orhan Deval

Pls kindly pass to Owners

Charterers are surprised at the accusations of silence.

Their position is quite clear; indeed the repair crew have been endeavouring to commence repairs since yesterday but charterers are advised that class/master have not yet allowed the repairs to commence.

Clearly charterers cannot work the vessel until repairs are done and none of these delays are of charterers making.

At the same time of course charterers do not wish to "rock the boat". As Owners have already refixed Orhan Deval it would assist charterers in that goal if owners were to advise the laycan/delivery range of the fixture and what notices need to be given thereunder to new charterers.

In the mean time, rights are reserved, of course.

Brgds,
Ralph

Semark, David M.

From: Mark Seward [MSeward@bentleys.co.uk]
Sent: 24 April 2007 13:59
To: Semark, David M.
Subject: Re: Orhan Deval

David

In reponse to the master, I have received initial comments from our correspondent. Full details follow

Qte

This is absolutely not true but sorry to say this would be simply expected from Master of the vessel who kicked all parties out of the vessel at their very first day of attendance back on 6 April 2007 for the Joint Survey and refused to sign the Joint Statement.

Messrs Suez Shipyard and Messrs Technical Marine Services attended onboard on 12 April 2007 when we even requested from Messrs BSC to inform the Master of the vessel about their attendance onboard to check the damages and give us the required quotations. When even Master at the time did hand to Suez Shipyard additional list of damages, different than the Joint Statement findings, to be repaired. Messrs Suez Shipyard and TMS Quotations on 14 April 2007.

Later, on Friday 20 April 2007 Messrs Port Said Engineering Works and Workshop UMM Elkoura attended onboard upon our request to them and also attended on Saturday 21 April 2007 when Master kind of kicked them out of the vessel; again

Unqtw

I suggest you be guided accordingly

Mark Seward
Partner
Bentleys Stokes and Lowless
Direct +44 207 3604660
Mob +44 7971049333
Aoh +44 1582 882173

Information in this message and any attachments may be confidential or protected by privilege.
If you are not the intended recipient please return the message to the sender and delete/destroy the message and all copies in your possession.
A list of partners' names is available on request.

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E-mail: law@bentleys.co.uk

Website: www.bentleys.co.uk

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23/05/2007

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Mary Ann C. Marlowe (MM-0723)
Christopher P. Keane (CPK-4394)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
DEVAL DENIZCILIK VE TICARET A.S.,

Plaintiff,

-against-

REPINTER INTERNATIONAL SHIPPING
CO. S.A. and MIACHART CORPORATION
LLC.,

Defendants.

**REPLY DECLARATION OF
DAVID MARTIN SEMARK**

07 Civil 3397 (JGK)

Exhibit 14 to the Declaration of David Martin Semark
Dated 19th July 2007

From: LUDMILA KIPCHAKBAEVA <kipchakbaeva@bsc.minsk.by>
Date: Sun, 22 Apr 2007 19:03:06
To: belarus@bearbulk.com
Cc: operations@miachart.com, Mark Seward <MSeward@bentleys.co.uk>
Subject: Re. Orhan Deval

Tony-Serge/Ludmila

Re. Orhan Deval

Pls kindly pass to Owners.

Charterers refer to the recent attendances on board which have been reviewed with all attending repair crews.

Since the first attendance of suez yard and tms the Master has prevented charterers from repairing the damage required prior to sailing. We are advised at the Master's request quote are given only for "full" repairs as he made it clear to those attending that nothing else would suffice

When Miachart as disponent Owner, finally clarified what needed to be done, charterers sought to again request more limited quotes. Suez yard, in view of time wasted were not prepared to requote. TMS were, quoting \$7500.

In the meantime, the master / C/O have yet again notified the TMS representative that they require full repairs onboard / in holds and will not accept / sign for any partial repairs. Owners seem on the one hand to ask charterers to repair and at the same time prevent them doing so. Accordingly it seems that the TMS intends to quit

In further mitigation charterers had requested two other firms to quote for the required repairs (PSEW as affiliated to SCA, and UMM Elkoura as private firm which was attending another vessel to finish her minor repairs in accordance with class requirements) but unfortunately when both firms attended onboard, they have been notified with same by Master. Ie he will not allow the repairs demanded by miachart to be performed. Indeed the firms found difficulties with Master in a way as he informed them about all the reported damages to be repaired and also yesterday when the 2 firms re-attended to check on certain items for their calculations of materials and their quotation; the Master refuse their stay onboard.

In short, the masters conduct (back as far as Kandla) and since the surveyors first boarded has been designed to, and has certainly had the effect of, preventing charterers from trading the ship for her final voyage and prevented them from repairing the ship

In light of the master's interference and conduct, which charterers consider repudiatory, they have no alternative but to accept that repudiation hereby. Charterers consider the charter at an end and should be guided accordingly.

brgds,

Ludmila

KEANE & MARLOWE, LLP
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Mary Ann C. Marlowe (MM-0723)
Christopher P. Keane (CPK-4394)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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DEVAL DENIZCILIK VE TICARET A.S.,

Plaintiff,

-against-

REPINTER INTERNATIONAL SHIPPING
CO. S.A. and MIACHART CORPORATION
LLC.,

Defendants.

**REPLY DECLARATION OF
DAVID MARTIN SEMARK**

07 Civil 3397 (JGK)

Exhibit 15 to the Declaration of David Martin Semark
Dated 19th July 2007

Miachart

From: Miachart [operations@miachart.com]
Sent: Tuesday, April 24, 2007 10:42 AM
To: 'BBT Tradeships'
Cc: 'operations@miachart.com'
Subject: m/v Orhan Deval / Repinter

Larry,

Owners will have received in copy Sub-Charterers' message of Sunday 22nd April 2007 treating the Sub-Charter as discharged. Charterers have also received the following message from Sub-Charterers in response to the Master's version of events set out in Owners' message of Monday 23rd April 23 timed at 9:24 AM.

Qte

This is absolutely not true but sorry to say this would be simply expected from Master of the vessel who kicked all parties out of the vessel at their very first day of attendance back on 6 April 2007 for the Joint Survey and refused to sign the Joint Statement.

Messrs Suez Shipyard and Messrs Technical Marine Services attended onboard on 12 April 2007 when we even requested from Messrs BSC to inform the Master of the vessel about their attendance onboard to check the damages and give us the required quotations. When even Master at the time did hand to Suez Shipyard additional list of damages, different than the Joint Statement findings, to be repaired. Messrs Suez Shipyard and TMS Quotations on 14 April 2007.

Later, on Friday 20 April 2007 Messrs Port Said Engineering Works and Workshop UMM Elkoura attended onboard upon our request to them and also attended on Saturday 21 April 2007 when Master kind of kicked them out of the vessel; again.

Unqte

In the circumstances, as intermediate Charterers, Charterers must therefore reserve all rights against Owners, both in respect of the cost of the repairs and the time lost since 4th April. Clearly, the issue of the Master's conduct will now have to be resolved in arbitration.

However, the immediate issue in hand is the completion of the repairs and the redelivery of the vessel. As Owners know, the Sub-Charterers have now abandoned the Sub-Charter citing the Master's refusal to let them proceed with the repairs.

Without prejudice to Charterers' position that these repairs are properly for Owners' account, Charterers are willing to arrange and pay for the repairs necessary to clear Class recommendations, 122, 124, 125, 127 (i.e. those items listed as "to be rectified prior sailing" in the ABS report dd 4th April 2007). This will be done with full reservation of all Charterers' rights to claim back the time lost, the cost of the repairs and all Charterers' other losses, from Owners in due course.

However, in order to complete these arrangements, Charterers require Owners' express assurance in writing that the contractors will be permitted to do this work on board with full co-operation from the

5/22/2007

Master and the crew, and that Owners will permit the vessel to sail once Class has approved the repairs to clear items recommendations, 122, 124,125, 127.

Please supply this by return, and confirm that instructions to this effect have been passed to the Master and that work can proceed as soon as the contractors attend on board.

Brgds,

Miachart

5/22/2007

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Christopher P. Keane (CPK-4394)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
DEVAL DENIZCILIK VE TICARET A.S.,

**REPLY DECLARATION OF
DAVID MARTIN SEMARK**

Plaintiff,

-against-

07 Civil 3397 (JGK)

REPINTER INTERNATIONAL SHIPPING
CO. S.A. and MIACHART CORPORATION
LLC.,

Defendants.

Exhibit 16 to the Declaration of David Martin Semark
Dated 19th July 2007

From: BBT Tradeships [mailto:bbt@tradeships.com]
Sent: Wednesday, April 25, 2007 10:15 AM
To: Miachart Corporation
Subject: LN-0425.049 MV Orhan Deval / Repinter Intl - CP dd 13 Apr `06

Our Ref:LN-0425.049 Apr-25-07 10:14 Eastern Daylight Time

MV Orhan Deval / Repinter Intl - CP dd 13 Apr `06

Pls note folwg fm Owns;

Qte//

T O P U R G E N T

FURTHER TO OUR MESSAGE NO 74604 OF YESTERDAY ON 24TH APRIL 2007, PLEASE NOTE JUST NOW WE HAVE BEEN INFORMED BY THE MASTER THAT THE TEMPORARY REPAIRS WILL BE COMPLETED TODAY AROUND 19:00 LT AT ADABIYA AFTER THEIR FULL WORK ALL THE NIGHT AND HE IS ASKING TO ARRANGE THE LOCAL ABS SURVEYOR TO CHECK THE REPAIR WORKS.

ACCORDINGLY, IN CASE THE SURVEYOR APPROVE THE WORKS AND PERMIT VESSEL'S SAILING IN BALLAST CONDITION TO THE NEAREST / CONVENIENT PORT FOR PERMANENT REPAIRS, THE VESSEL WILL BE READY TO SAIL TODAY ON 25/04 AROUND 21:00 HRS LT.

UNDER THE CIRCUMSTANCES, WE ASK CHRTRS TO CONFIRM THE DRYDOCKING PLACE/PORT WITHIN TODAY 25TH APRIL 2007 AT 20:00 HRS ISTANBUL TIME AS THERE IS NO ANY CHANCE TO REPAIR THE DAMAGES AT ADABIYA DUE TO LACK OF CERTIFIED MATERIALS ACCEPTABLE BY THE ABS IN ACCORDANCE WITH CLASS RULES AND THE ADVISES OF SUB CHRTRS' NOMINATED REPAIR TEAM.

IN CASE THE CHRTRS AGAIN FAIL TO RESPONSE IN TIME, WE'LL CONSIDER AND USE THEIR SUCH ATTITUDE AS BREACH OF THE C/P ONCE AGAIN AND START LEGAL PROCEEDING AGAINST CHRTRS AND THEIR GUARANTEED COMPANY OF MESS MIACHART/MIAMI BY ACCEPTING THEIR REPUDIATION OF THE C/P.

RGDS
OPR.

Uqte//

Pls make sure that chtrs recvd this msge, pls advise Chtrs reply URGENTLY.

Thks & B Rgds

Ref:1764847

BBT Tradeships
Tel: 201-585-2150
Fax: 201-585-5380

KEANE & MARLOWE, LLP
Attorneys for Defendants
REPINTER INTERNATIONAL SHIPPING
CO. S.A. and MIACHART CORPORATION LLC
197 Route 18 South Suite 3000
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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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DEVAL DENIZCILIK VE TICARET A.S.,

**REPLY DECLARATION OF
DAVID MARTIN SEMARK**

Plaintiff,

-against-

07 Civil 3397 (JGK)

REPINTER INTERNATIONAL SHIPPING
CO. S.A. and MIACHART CORPORATION
LLC.,

Defendants.

Exhibit 17 to the Declaration of David Martin Semark
Dated 19th July 2007

SCRUTTON
ON
CHARTERPARTIES
and
Bills of Lading

Twentieth Edition

BY

STEWART C. BOYD

*Of Trinity College, Cambridge, and of the Middle Temple;
One of her Majesty's Counsel*

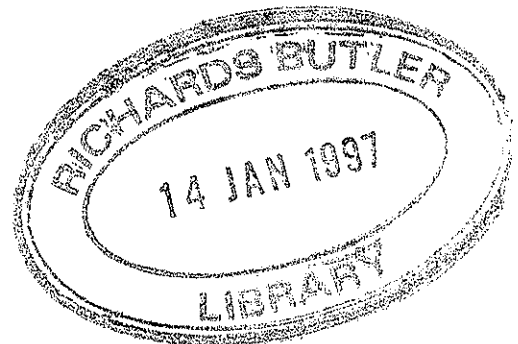
ANDREW S. BURROWS

*Of the Middle Temple; Professor of English Law,
University College, London; Law Commissioner for England and Wales*

AND

DAVID FOXTON

Of Magdalen College, Oxford, and of Gray's Inn



LONDON
SWEET & MAXWELL
1996

irrevocable, as is a notice that the charterer does not intend to exercise the option.¹⁹

Article 174—Time Charters: Payment of Hire

Under a time charter the charterer remains liable to pay hire throughout the contractual period, unless (1) his liability is suspended by an express provision in the charter,²⁰ or (2) the owner, in breach of his contractual duties, fails to render the services promised under the charter,²¹ or (3) the charter is frustrated.²²

Thus in the absence of express agreement hire is payable²³ during detention for breach of blockade,²⁴ by embargo,²⁴ bad weather²⁵ or repairs,²⁶ unless the delay involved is so great as to frustrate the contract.²⁷

The charterer cannot rely on an excepted peril such as strikes or restraint of princes, even when expressed to be mutual, as excusing him from paying hire during time in which by such excepted peril he is unable to use the ship.²⁸

The right of the charterer in paying hire, which is almost invariably made payable in advance, to make deductions, for example, in respect of breach of contract by the shipowner or disbursements made to or on behalf of the master, is recognised in certain circumstances. Some deductions, such as master's disbursements, may be expressly permitted by the time

¹⁹ *Marseille Fret S.A. v. D. Oltmann Schiffahrts G.m.b.H. & Cook G. (The Trado)* [1982] 1 Lloyd's Rep. 157. See also *Atlantic Lines & Navigation Co. Inc. v. Didymi Corp.* [1984] 1 Lloyd's Rep. 583 ("narrowing" the agreed tolerance).

²⁰ Such as the off-hire clause: see Art. 176.

²¹ *Sea and Land Securities v. William Dickinson* [1942] 2 K.B. 65 (C.A.); *Akt. Tankexpress v. Compagnie Financiere Belge des Petroles* (1947) 80 Ll.L.R. 365 (C.A.); affirmed [1949] A.C. 76 (H.L.). The decision of the C.A. in the former case left open the question whether strictly the charterer's obligation to pay hire is suspended or whether his right is to claim damages the measure of which would be at any rate the amount of hire for the period of refusal of the charter services. But in the latter case, Atkinson J. held (1946) 79 Ll.L.R. 45 that the charterer's obligation to pay hire was suspended and, as the C.A. was equally divided on the point, his judgment stood on appeal. The H.L. decided this case on another point, but the remarks of Lords Porter [1949] A.C. 76 at p. 91 and du Parc at p. 106 suggest, contrary to the view of Atkinson J. and Bucknill L.J. and in accord with that of Tucker L.J., that there is no half-way house between acceptance of the repudiation and continuance of the charter with the consequent obligation to continue to pay hire. See, also, *per* Bailhache J. in *Admiral SS. Co. v. Weidner* [1916] 1 K.B. 429 at p. 436.

²² See Art. 14 and Law Reform (Frustrated Contracts) Act 1943.

²³ Where hire is earned at the end of each period specified it may, unless a contrary intention appears (as in *Gibbon v. Mendez* (1812) 2 B. & Ald. 17), be recovered by the shipowner although only payable under a charter at longer intervals during one of which the ship may be lost: *Havelock v. Geddes* (1809) 10 East 555.

²⁴ *Moorsom v. Greaves* (1811) 2 Camp. 626. *Cf. Radcliffe v. Compagnie Generale* (1918) 24 Com.Cas. 40 (detention due to fitting armament and waiting for gun crew).

²⁵ See n. 21, *supra*.

²⁶ *Havelock v. Geddes* (1809) 10 East 555; *Ripley v. Scaife* (1826) 5 B. & C. 167.

²⁷ See Art. 14.

²⁸ *Brown v. Turner Brightman* [1912] A.C. 12; *Aktieselskabet Lina v. Turnbull*, 1907 S.C. 507.

charter, usually subject to the vouching of payments. Such express provisions will not, however, deny the charterer's right to equitable set-off in other circumstances.²⁹

This right, not applicable to a claim for freight under a voyage charter,³⁰ does not arise in every case where there are cross-claims, nor every case where there are cross-claims arising out of the same contract. The charterer will only have a right of deduction where the breach of the shipowner has deprived or prejudiced him in his use of the ship,³¹ and then only such hire as was due in respect of the period in which the charterer has been deprived of or prejudiced in the use of the ship.³² Thus the right does not apply to cross-claims based upon conversion of bunkers³³ or damage to cargo.³⁴ Making deductions from hire, unless fully justified as to the right to deduct or set-off and as to quantum, may be fraught with danger that the owner may be entitled to withdraw his ship.³⁵

It appears to be generally accepted that (a) a charterer is not entitled to deduct from a monthly instalment due in advance a sum in respect of a known future off-hire period, which will begin during that month; (b) such a deduction is however permissible from the next monthly hire payment, if the vessel is then back on hire.³⁶ If a vessel is off-hire at the due date for a monthly instalment in advance, the charterer has the option of not paying until just before the vessel returns on hire, or paying on the due date subject to a deduction in respect of a period off-hire during the previous month.³⁷ If on the due date for payment a sum of hire is due, payment by the



²⁹ *Federal Commerce and Navigation v. Molena Alpha Inc. (The Nanfri)* [1978] Q.B. 927 (C.A.) per Lord Denning M.R. and particularly by Goff L.J. at p. 988; see, also, *Santiren Shipping Ltd v. Unimarine (The Chrysovalandou Dyo)* [1981] 1 Lloyd's Rep. 159. The point was deliberately not dealt with in the H.L. [1979] A.C. 757.

³⁰ *Aries Tanker Corporation v. Total Transport (The Aries)* [1971] 1 Lloyd's Rep. 334 (H.L.), upholding *Henriksens Rederi A/S v. Rolimpex (The Brede)* [1974] 1 Q.B. 233, distinguished in the case of time charter hire in *The Nanfri*, *supra*, by Denning M.R. and Goff L.J., approving *Compania Sud Americana de Vapores v. Shipmair B.V. (The Teno)* [1977] 2 Lloyd's Rep. 289, where the earlier cases are fully discussed. See page 331 n. 69.

³¹ *Leon Corporation v. Atlantic Lines & Navigation Co. Inc. (The Leon)* [1985] 2 Lloyd's Rep. 470.

³² *Century Textiles & Industry Ltd v. Tomoe Shipping Co. (Singapore) Pte Ltd (The Aditya Vaibhav)* [1991] 1 Lloyd's Rep. 573.

³³ *The Leon*, *supra* although the status of overriding fraud was left open at p. 476.

³⁴ *The Teno*, *supra*, per Parker J. at p. 297 and *The Nanfri*, *supra*, per Denning M.R. at p. 976 and Goff L.J. at p. 981. Lord Salmon in *The Mihaios Xilas* [1979] 2 Lloyd's Rep. 303 (H.L.) at p. 313 said, *obiter*, that the only exception to the obligation on the charterer to pay full hire on or before when due was where the parties by their course of conduct had agreed that the owner's liabilities might be deducted from hire, if discharge of them by the charterer could be vouched.

³⁵ per Goff L.J. in *The Nanfri*, *supra*, at pp. 981-982. As to the right of withdrawal see Article 175, *post*, p. 355 *et seq.*

³⁶ *Tradax Export v. Dorada Compania Naviera (The Lutetian)* [1982] 2 Lloyd's Rep. 140 at p. 149. For cases on off-hire clauses, see Article 176, *post*, p. 359 *et seq.*

³⁷ *The Lutetian*, *supra*.

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Christopher P. Keane (CPK-4394)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
DEVAL DENIZCILIK VE TICARET A.S.,

Plaintiff,

-against-

REPINTER INTERNATIONAL SHIPPING
CO. S.A. and MIACHART CORPORATION
LLC.,

Defendants.

**REPLY DECLARATION OF
DAVID MARTIN SEMARK**

07 Civil 3397 (JGK)

Exhibit 18 to the Declaration of David Martin Semark
Dated 19th July 2007

Semark, David M.

From: Mark Seward [MSeward@bentleys.co.uk]
Sent: 24 April 2007 13:11
To: Semark, David M.
Cc: William Chetwood; ldavies@tisdale-lennon.com; plennon@tisdale-lennon.com; mmarlowe@keaneandmarlowe.com
Subject: RE: Orhan Deval
Attachments: technical marine.pdf; SUEZ Shipyard Quotation.doc; quotation received from Suez Shipyard.pdf; TMS Quotation.pdf

David

Many thanks for your email of 1125 hours. It will come as no surprise to you that our clients' decision taken on Sunday was not taken lightly. Our clients having taken every possible step to arrange repairs of the vessel.

We hope that you will not be surprised that we do not accept the Master's version of events. This is not the first time this has happened on this charterparty. Very extensive efforts were made by Mostafa L. Hamamsy as club correspondent to seek and obtain various repair quotes and it is our clients' position that the Master at all material times did seek to obstruct the repairs. Had he not done so the repairs would have been completed some time ago.

You say charterers are repudiatory; we disagree. Whether or not Charterers conduct is repudiatory will in due course turn upon the attitude of the Master since the initial repairs were first demanded.

As to the material allegations in relation to the Rule B attachment, our clients have correctly calculated the termination date of the charterparty as 22nd April and have not purported in their final hire statement to suggest that any hire has been paid which has not been paid. If charterers are correct in the contentions the vessel has been off hire since 4th April.

Furthermore, in the event that Owners are in repudiatory breach as Charterers' allege, they are entitled to throw the charterparty up as is where is and as such do not need to give credit for the US\$130,000 in Suez Canal transit fees.

It follows therefore that the factual allegation, as will be proved in due course, that Charterers were arranging sufficient repairs for the vessel to sail is indeed true, and it became apparent only over the weekend, after the filing of the papers in New York, that to arrange the repairs necessary to enable the vessel to sail would be impossible given the Master's conduct.

Naturally we shall seek our clients' instructions in relation to your demand for security which was, of course, anticipated and of course our clients regret that it has come to this. This has not been due to any fault of theirs nor, our clients accept, any direct fault of your clients. However the factual complications surrounding the events at Kandla and at Adabiya are patent for all to see.

In these circumstances, it remains our view that our clients have validly terminated and nothing will change our mind on that; please be guided accordingly.

Finally, we attach three of the repairs quotes obtained at Adabiya

Regards
Mark Seward

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Information in this message and any attachments may be confidential or protected by privilege.
If you are not the intended recipient please return the message to the sender and delete/destroy the

message and all copies in your possession.

A list of partners' names is available on request.

23/05/2007

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Christopher P. Keane (CPK-4394)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
DEVAL DENIZCILIK VE TICARET A.S.,

Plaintiff,

-against-

REPINTER INTERNATIONAL SHIPPING
CO. S.A. and MIACHART CORPORATION
LLC.,

Defendants.

**REPLY DECLARATION OF
DAVID MARTIN SEMARK**

07 Civil 3397 (JGK)

Exhibit 19 to the Declaration of David Martin Semark
Dated 19th July 2007

Miachart

From: Miachart [operations@miachart.com]
Sent: Wednesday, April 25, 2007 11:10 AM
To: 'BBT Tradeships'
Cc: 'Miachart Corporation'
Subject: RE: LN-0425.049 MV Orhan Deval / Repinter Intl - CP dd 13 Apr '06

Larry,

Charterers refer to Owners' previous two messages, received via broking channels at 13:15 Eastern Daylight Time yesterday, and 10:14 today.

The truth or otherwise of the Sub-Charterers' and Owners' respective allegations regarding the Master's conduct will now have to be resolved in arbitration, and Charterers' own position remains fully reserved both as regards responsibility for the cost of the repairs and the time lost since 4th April.

Noted that Owners have now taken matters into their own hands and that the crew will now be carrying out the repairs necessary to enable the vessel to leave Egypt. Charterers have to question however why Owners did not mitigate properly, by doing this far earlier, given their assertion that ABS certified material was not available in Adabiya. Owners were therefore knowingly asking for the impossible by calling for Charterers to do the repairs locally.

As to Owners' request that Charterers arrange for a subsequent drydocking, as Owners know, Charterers' position is that these repairs are not for their account. In any event however, Charterers cannot see any basis why an (unscheduled) dry-docking is necessary to clear Class recommendations 122, 124, 125 and 127. Any immediately necessary repairs can be done afloat with the balance held over for the vessel's next scheduled dry-docking as envisaged by C/P clause 32. Accordingly, Charterers have to decline Owners' invitation that they "find a suitable dry-dock en route".

However, if Owners do now drydock the vessel, then Charterers will require unimpeded access for their and the Sub-Charterers' surveyors to monitor the repairs, which please confirm Owners will grant.

As Owners are aware, the Charter period is now almost up. Because of the uncertainty created by the present situation, and because Owners will now perform the repairs themselves, Charterers do not have the necessary information to give the redelivery notices envisaged in Clause 42, but gather from Owners' message that Owners want to take redelivery in the Eastern Mediterranean, which Charterers will consent to.

Grateful for Owners' update on the progress of the repairs so that a redelivery date within the C/P period can be fixed. Naturally, to the extent any hire becomes payable by Charterers, this will be remitted without prejudice to Charterers' right to claim this back, together with hire already paid, in any later arbitration proceedings.

We look forward to hearing from Owners.

Rgds
 Miachart

10*

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
DEVAL DENIZCILIK VE TICARET A.S.,

Plaintiff,

-against-

REPINTER INTERNATIONAL SHIPPING
CO. S.A. and MIACHART CORPORATION
LLC.,

Defendants.

**REPLY DECLARATION OF
DAVID MARTIN SEMARK**

07 Civil 3397 (JGK)

Exhibit 20 to the Declaration of David Martin Semark
Dated 19th July 2007

Hire Statement:

M/V ORHAN DEVAL Voy VII BSC

DEL: 06/02/2007 21:40 GMT
 REDEL: 09/05/2007 21:40 GMT
 = 92.00000 Days @ USD\$ 18,750.00 \$ 1,725,000.00

LESS OFFHIRE:

TOTAL HIRE: 92.00000 \$ 1,725,000.00
 LESS:
 2.50% address comm. -43,125.00
 0.00
 1st HIRE -249,273.73
 2nd HIRE -268,734.37
 3rd HIRE -274,218.75
 4th HIRE -100,000.00
 -174,218.75
 5th HIRE
 6th HIRE
 7th HIRE
 PRELIMINARY HIRE PAYMENT

BUNKERS ON DELIVERY

IFO (mt) 105.200 AT USD \$ 290.00
 MDO (mt) 61.400 AT USD \$ 590.00

BUNKERS ON REDELIVERY

IFO (mt) 105.200 AT USD \$ 290.00 -30,508.00
 MDO (mt) 61.400 AT USD \$ 590.00 -36,226.00

BUNKERS OVER CONSUMED

IFO (mt) AT USD \$ 0.00
 MDO (mt) AT USD \$ 0.00

I.L.O.H.C. 3,500.00
 CHARTERERS EXPS \$1,300 per Mo. X 12 /365 X Days 3,932.05

OWNER EXPENSES:

FINAL BALANCE DUE CHARTERERS(-)/OWNERS(+): \$ 556,127.45

Transfer to: Bank of America
 ABA No.: 067006063

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
DEVAL DENIZCILIK VE TICARET A.S.,

**REPLY DECLARATION OF
DAVID MARTIN SEMARK**

Plaintiff,

-against-

07 Civil 3397 (JGK)

REPINTER INTERNATIONAL SHIPPING
CO. S.A. and MIACHART CORPORATION
LLC.,

Defendants.

Exhibit 21 to the Declaration of David Martin Semark
Dated 19th July 2007

Prelim Hire Statement:

M/V ORHAN DEVAL

DEL:	25/04/2006 20:50 GMT			
REDEL:	05/05/2007 17:30 GMT			
=	374.86111	Days @ USD\$	10,200.00	\$ 3,823,583.33

LESS OFFHIRE:

DOP ANCHORGE ADABIYA	04/04/2007 22:30 GMT			
EST SAILING SUEZ	28/04/2007 22:30 GMT			
	24.00000	Days @ USD\$	10,200.00	\$ -244,800.00

EST SAILING SUEZ	28/04/2007 22:30 GMT			
DLOSP GULLUCK	05/05/2007 17:30 GMT			
	6.79167	Days @ USD\$	10,200.00	\$ -69,275.00

<u>TOTAL HIRE:</u>	344.06944			\$ 3,509,508.33
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LESS:

2.50%	address comm.			-87,737.71
1.25%	address comm.			-43,868.85
1st HIRE				-348,972.23
2nd HIRE				-154,298.65
3rd HIRE				-150,370.23
4th HIRE				-148,002.22
5th HIRE				-148,002.23
6th HIRE				-151,502.23
7th HIRE				-148,002.22
8th HIRE				-148,002.23
9th HIRE				-151,502.22
10th HIRE				-148,002.23
11th HIRE				-148,002.23
12th HIRE				-151,502.22
13th HIRE				-148,002.23
14th HIRE				-148,002.23
15th HIRE				-151,502.22
16th HIRE				-148,002.23
17th HIRE				-148,002.22
18th HIRE				-148,002.23
19th HIRE				-151,502.22
20th HIRE				-148,002.23
21st HIRE				-151,502.23
22nd HIRE				-148,002.22
23rd HIRE				-148,002.23
24th HIRE				-39,403.95
PRELIMINARY HIRE PAYMENT				

BUNKERS ON DELIVERY

IFO (mt)	529.863	AT	USD \$	350.00	185,452.05
MDO (mt)	34.626	AT	USD \$	630.00	21,814.38

EST. BUNKERS ON REDELIVERY

IFO (mt)	529.863	AT	USD \$	350.00	-185,452.05
MDO (mt)	34.626	AT	USD \$	630.00	-21,814.38

OFF-HIRE BUNKER CONS.

IFO (mt)	25.358	AT	USD \$	350.00	-8,875.42
MDO (mt)	40.979	AT	USD \$	630.00	-25,816.87

BUNKER CREDIT

IFO (mt)	230.334	AT	USD \$	350.00	80,616.90
MDO (mt)		AT	USD \$		0.00

I.L.O.H.C.

CHARTERERS EXPS	\$1,500 per Mo. X 12 /365 X Days			3,700.00
INTERME H.C.				16,967.81
INTERME H.C.				3,500.00
INTERME H.C.				3,500.00
INTERME H.C.				3,500.00
INTERME H.C.				3,500.00
INTERME H.C.				3,500.00
INTERME H.C.				3,500.00

OWNER EXPENSES:

IMMINGHAM - FW				-1,132.00
SUEZ TRANSIT DUES(REQUIRE FINAL D/A)				102700.09

FINAL BALANCE DUE CHARTERERS(-)/OWNERS(+):				\$ -103,527.30
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Bank:	GARANTI BANKASI ALTUNIZADE BRANCH/ISTANBUL
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Swift:	TGBATRIS
Account:	9004781 / USD E
Beneficiary:	DEVAL DENIZCILIK VE TIC A.S.
Ref:	M/V ORHAN DEVAL / REPINTER